



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Issued by the Department of Transportation on August 9, 2004

NOTICE OF ACTION TAKEN -- UNDOCKETED

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

BACKGROUND

On June 18, 2004, the United States and the People's Republic of China (PRC) initialed a protocol amending the U.S.-PRC aviation agreement.¹ The amended agreement greatly expands the opportunities for the air carriers of both countries, including the opportunities for charters. Under the new agreement, each Party shall approve applications by the airlines of the other Party for 75 one-way charter flights annually from August 1 of each year, between points in China Zone 1² and U.S. points on city pairs served by Chinese carriers' scheduled services of the same type (combination or all-cargo) as the proposed charter flight, and 75 one-way charter flights annually from August 1 of each year, between points in China Zone 2³ and U.S. points on city pairs served by Chinese carriers' scheduled services of the same type (combination or all-cargo) as the proposed charter flight.

By letter dated June 28, 2004, Kalitta Air, Inc. requested an allocation of 29 charters to a point in China Zone 1. Evergreen filed a response to Kalitta's request stating that it believed it was necessary for the Department to provide interested carriers with advance notice of what procedures would be established to distribute the available charters for Zones 1 and 2. We granted Kalitta's request on July 16 and stated that we would address the question of procedures for allocating the remaining charters by separate action. On August 5, 2004, the Department notified U.S. carriers of procedures to distribute the newly available charter opportunities between the United States and the People's Republic of China (PRC).⁴

XX Request of Polar Air Cargo, Inc., for allocation of 24 U.S.-China all-cargo charter flights

By letter dated July 23, 2004, Polar requested an allocation of 24 one-way charters to provide service over the routing Shanghai – (Anchorage) – Chicago. Polar proposes to operate these charters between September 8 and October 31, 2004.

XX Request of Kalitta Air, Inc., for allocation of 4 U.S.-China all-cargo charter flights

By letter dated July 26, 2004, Kalitta requested an allocation of an additional four one-way charters to provide service over the routing Shanghai – (Khabarovsk, Russia) – (Anchorage) – Los Angeles. Kalitta proposes to operate these charters between August 25 and September 22, 2004.

Evergreen and Kalitta filed answers to Polar's request, and Polar filed a reply. Evergreen requests that the Department withhold a decision on Polar's request until the Department issues procedures to be followed for allocation of the remaining Zone 1 and Zone 2 charter flights.

¹ On July 24, 2004, the Protocol was signed and formally brought into force.

² China Zone 1 consists of Shanghai, Beijing, and Guangzhou.

³ China Zone 2 consists of Anhui, Fujian, Guangdong (except Guangzhou), Hebei, Henan, Hubei, Hunan, Jiangsu, Jiangxi, Shandong, Shanxi, Tianjin, and Zhejiang.

⁴ The August 5 Notice assigns to the Director of the Office of International Aviation the authority to administer distribution of the flights from the charter pool for this and subsequent years, and where deemed in the public interest, to waive the restrictions on the charter pool.

Kalitta objected to Polar's request, stating that Polar is an applicant for a U.S.-China designation and frequencies and should not be permitted to receive a large number of the available charters until the Department's decision on the scheduled designation is made. Kalitta argues that Polar's receipt of this number of charters would preclude other carriers from discussing any extended program with potential customers, leaving Polar able to commence its scheduled operations (assuming it is awarded the scheduled designation) without this added competition from the lower-priced charter alternatives in the market. Kalitta maintains that even if the charters were returned to DOT for reallocation, they would have been unavailable during the period when shippers are most likely to be arranging their charter lift for the year, particularly at the peak season.

Polar notes that Evergreen did not specifically object to an allocation to Polar but asked that the Department issue procedures to be followed before acting on applications. Polar states that it has entered into a contract and that the limited time remaining to receive approval and complete necessary arrangements in advance of the charter flights requires prompt action on Polar's request.

Polar notes that Kalitta has already received 29 charters. It states that, should Polar be fortunate enough to win the new designation, CAAC approval will have to be obtained before service can begin, and thus, these charters will be the only means of serving the market during the months of September and October. Polar further states that if selected for scheduled service, and if scheduled operations are allowed to commence before the end of the period for which these charters are requested, Polar will return the remaining charters to the Department for reallocation.

Applicant reps: Kevin Montgomery (Polar) 202-828-1002 DOT Analyst: Sylvia Moore 202-366-6519
Mark Atwood (Kalitta) 202-463-2512

DISPOSITION

XX Granted (See Remarks)

The above action was granted to Polar on August 9, 2004, and will be effective September 8, 2004, through October 31, 2004

The above action was granted to Kalitta on August 9, 2004, and will be effective August 25, 2004, through September 22, 2004

Action taken by: Paul L. Gretch, Director
Office of International Aviation

Remarks: We have decided to grant Polar and Kalitta the charter flights they seek for U.S.-China cargo service to a point in Zone 1. It is our policy to ensure that the operating rights available to U.S. carriers are fully utilized. No other carrier has presented an application to operate any charters at this time. Both Polar and Kalitta have demonstrated that they have firm plans to utilize the charters. With respect to the concerns raised by Evergreen, we have, as noted above, issued procedures for the allocation of the charters at issue here. With respect to Kalitta's concerns, we do not see as dispositive the fact that Polar is an applicant in the *2004 Cargo Designation and 2004/2005 All-Cargo Frequencies (U.S.-People's Republic of China) Proceeding* to determine the recipient of the newly-available scheduled cargo designation in the U.S.-China market. A decision in that carrier-selection case has not been made, so Polar has no ability to serve the U.S.-China market other than by using the charters available from the pool. Moreover, as noted, Polar has

agreed that, if it is selected for the available scheduled cargo designation, it will return to the pool any unused charters upon commencement of its scheduled service in the market. We find that, under the circumstances presented, the public interest supports a decision to approve Polar's and Kalitta's requests. With the grant of these requests, 18 charters remain in the pool for Zone 1.

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